

to sell under the original levy, which remains unbroken; or to have him commanded to make a sale of it by a *venditioni exponas*. *Bond v. Cooper*, 6 November, 1826.—Per BLAND, Chancellor. I cannot conceive, that this Act of Assembly which directs the personal property to be re-delivered, will admit of being so construed as in any manner to impair the sheriff's right to his poundage fees. Its avowed object was to relieve him from his responsibility as the keeper of perishable property; and to benefit the defendant by delivering it back to him. In other respects the sheriff's right to his fees remains unaffected.

From these views of the subject I feel satisfied, that the sheriff's right to poundage fees has not been, in any manner, shaken by the mere interposition of the injunction. According to the ancient course the Court would not have discharged either the person or the property of the defendant from the custody of the sheriff under the execution, but upon the express condition, that his poundage fees should be paid or secured; *Franklyn v. Thomas*, 3 Meriv. 234; and the alterations made by the Acts of Assembly go no further than to prevent the sheriff from holding the person or selling the personalty taken in execution as a means of obtaining payment of his fees.

But this suit was instituted, and the injunction obtained by a corporator of the Cape Sable Company, as complainant against that body politic, and the plaintiffs in the executions as defendants; and they have, by a special agreement, consented to a decree directing the whole of the property of this corporation to be sold. It is therefore this decree which has thus left this sheriff in the possession of a complete legal right without any means whatever at law of having it satisfied. If the injunction had been dissolved the sheriff might, as we have seen, have proceeded, under the levy he had made upon the land of this company, to make sale of it to satisfy his poundage fees; but the decree has deprived him of the right to do so.

The plaintiffs in the executions cannot be permitted to consent to a decree, or in any manner to produce a sale of the defendant's *property under an authority different from that of the 639 executions they had caused to be issued, and levied by the sheriff, so as to deprive him of his poundage fees. Such a course of proceeding by those plaintiffs, to the prejudice of the sheriff, would be a fraud upon him, which I find no ground to impute to them from any of their manifested intentions. Their consent to the decree for a sale must, therefore, be considered as an implied admission, that the sheriff's right should not be affected by it; and that his fees should be first satisfied out of the proceeds of the sale made under the decree.

Then as to the Cape Sable Company, and its several corporators, who were clearly liable in their politic capacity, they could